

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE M. LORIE VELASCO, et al,
Plaintiffs,

vs.

KMART CORPORATION, et al,
Defendants,

vs.

GROUP SERVICE SYSTEM,
COOPERATIVA DE SEGUROS
MULTIPLES DE PUERTO RICO
GROUP SERVICE SYSTEM,
Third Party Defendants.

CIVIL NO.: 1998-1867 (PG)

**MOTION FOR RECONSIDERATION OF DENIAL OF EXTENSION OF
TERM TO FILE OPPOSITION TO THIRD-PARTY DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

COMES NOW Defendant and Third Party Plaintiff Kmart Corporation, represented by the undersigned attorney, and respectfully alleges and prays:

1. On April 15, 2004 the appearing party requested an extension of term until April 30, 2004 to file its opposition to the motion for summary judgment filed by third party defendant Group Service System and Cooperativa de Seguros Múltiples. (Docket No. 196).
2. On April 16, 2004, this Honorable Court denied said motion in light of the approaching trial date, which is scheduled to begin on May 24, 2004. (Docket No. 197).
3. Of importance is to note that the case at bar was stayed because of Kmart Corporation's bankruptcy filing as of January 22, 2002. On February 17, 2004, after a partial lift of stay was granted by the Bankruptcy Court and acknowledged by this Honorable

Court, the case was reopened after more than two years of inactivity. On March 9, 2004 there was a status conference in which pending motions and discovery were discussed. During said conference, Kmart Corporation was granted a 30 day term to submit the report of its expert witness neurologist Dr. Boris Rojas. Kmart Corporation complied with the term, as plaintiff's medical evaluation was performed on April 3, 2004 and the expert report by Dr. Boris Rojas was submitted on April 6, 2004. (Docket No. 194).

4. On March 31, 2004 Magistrate Judge Aida M. Delgado Colón issued a Report and Recommendation regarding the testimony of Kmart's psychiatric expert Dr. José Villanueva. (Docket No. 191). On April 8, 2004, Kmart Corporation filed its Objections to the Report and Recommendation. (Docket No. 195).

5. On the same date the Report and Recommendation was issued, Magistrate Judge Aida M. Delgado Colón granted Kmart Corporation until April 15, 2004 to respond to the Third Party Defendants' Motion for Summary Judgment (Docket No. 192). In the Order, the Magistrate Judge stated that the term was granted "especially in light of the approaching trial date and the two years that have passed since the filing of third-party defendants' motion for summary judgment". (Docket No. 192, page no. 2). It is respectfully submitted that due to the stay of the proceedings, the two years passed should have had no bearing in the Court's decision to deny Kmart Corporation's motion requesting that Group Service System's motion for summary judgment be held in abeyance. (Docket No. 162). By the same token, due to the recent reopening of the proceedings and Kmart's compliance with all other terms granted, it is respectfully requested from this Honorable Court that it reconsiders its denial of the motion requesting extension of term, grants this motion for

reconsideration and consequently allows the filing of the Opposition to Motion for Summary Judgment tendered herewith.

6. As stated in the motion requesting extension of term of April 15, 2004, in order to be able to adequately submit its opposition, an extensive review of the documentary evidence and the deposition testimony in the instant case was necessary. Furthermore, Kmart Corporation has valid grounds to oppose Group Service System's motion for summary judgment since "a trialworthy issue looms as to a fact which could potentially affect the outcome of the case". Dyno Nobel v. Amotech Corporation, 63 F. Supp. 2d 140 (1st Cir. 1999), citing Serapión v. Martínez, 119 F. 3d 982 (1st Cir. 1997) and McCarthy v. Northwest Airlines, Inc., 56 F. 3d 313, 315 (1st Cir. 1995).

6. In light of the above stated reasons, it is respectfully requested from this Honorable Court that it reconsiders its denial of the extension of term until today April 30, 2004 for the filing of Kmart's Opposition to Group Service System's motion for summary judgment and allows its filing as tendered herewith.

WHEREFORE, it is respectfully requested from this Honorable Court grants this Motion for Reconsideration and therefore allows the filing of the Opposition to the Motion for Summary Judgment tendered herewith.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30th day of April 2004.

IT IS HEREBY CERTIFIED that on April 30, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **José Quetglas Jordán, Esq.**, Quetglas Law Office, P.O. Box 16606,

San Juan, Puerto Rico, 00907-6606, and to **Vicente Santori Coll, Esq.**, PO Box 363073,
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s/Marta E.Vila Baez
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